# 83-5945

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IN THE

SUPREME COURT OF THE UNITED STATES

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No.

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JOHN MICHAEL,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

---

ON PETITION FOR A WRIT OF
CERTIORARI TO THE
SUPREME COURT OF FLORIDA

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# RESPONDENT'S BRIEF IN OPPOSITION

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The Respondent, the State of Florida, by and through the undersigned Assistant Attorney General, respectfully requests that this Court deny the petition for writ of certiorari.

## OPINION BELOW

Petitioner seeks review of a decision of the Supreme Court of Florida imposing the death penalty. That opinion is reported at 437 So.2d 138 (Fla. 1983).

## JURISDICTION

The jurisdiction of this Court is sought to be invoked by Petitioner under Section 1257(3), Title 28, United States Code. It is Respondent's position that the issues raised here are not such as should be reviewed by this Court. Review by writ of certiorari is a matter of sound judicial discretion, and

will be granted only where there are special and important reasons therefore. See Rule 19, Rules of the Supreme Court of the United States; Ross v. Moffitt, 417 U.S. 600, 94 S.Ct. 2437, 41 L.Ed. 2d 341 (1974).

## QUESTIONS PRESENTED

Whether for purposes of the rule announced in Massiah v. United States a jail inmate who has previously acted as an informant for the State continues to be an agent of the State when he, on his own initiative but for the State's use, elicits incriminating information from another inmate housed near him who has been indicted for a capital offense?

## REASON WHY THE WRIT SHOULD BE DENIED

### I

This court's holdings in Massiah v. United States, 377 U.S. 201 (1964) and United States v. Henry, 447 U.S. 264 (1980) are quite clear as they relate to the term of the government agent's "agency". Those cases deal with the government's solicitation of an individual to gain the confidence of a criminal suspect against whom charges had been brought in order to induce the suspect to make post-indictment incriminating statements relating to those charges.

The basis of these two holdings is that such statements are inadmissible at trial as a result of having been obtained in violation of the Sixth Amendment right to counsel.

The scope of the agency in Massiah and Henry relates to that time period often indictment and begore trial. It relates to one

(or more) informants recruited by the government to seek information from one specified person about the crime for which he was indicted.

The Petitioner's argument that once an informer has informed once against one person, he is forever a government agent against all persons with whom he comes in contact has no basis in this court's holdings in Massiah and Henry.

## CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by U.S. Mail to William C. McLain, Assistant Public Defender, Hall of Justice Building, 455 North Broadway Avenue, Bartow, Florida 33830-3798, on this 12th day of December, 1983.

Frank Lester Adams, III
OF COUNSEL FOR RESPONDENT